



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 12-10691
)
Applicant for Security Clearance)

Appearances

For Government: Christopher N. Morin, Esq., Department Counsel
For Applicant: Applicant's sister

04/01/2013

Decision

RIVERA, JUAN J., Administrative Judge:

Applicant's statement of reasons (SOR) alleges six delinquent debts, totaling \$565,178, and his failure to file income tax returns as required by law. He did not make sufficient progress resolving his delinquent debts. Financial considerations are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 6, 2010. On September 28, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on November 26, 2012, and requested a hearing before an administrative judge. The case was assigned to me on December 12, 2012.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 19, 2012, scheduling a hearing for January 24, 2013. At the hearing, the

¹ DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

Government offered exhibits (GE) 1 through 8. Applicant objected to the admissibility of GE 5, 6, 7, and 8, asserting that he had additional information about the status of the debts and the state tax lien depicted in the exhibits. (Tr. 102-104) I admitted the documents because Applicant's objections pertained to the weight to be provided to the exhibits. (Tr. 104-105)

Applicant testified, and he submitted exhibits (AE) 1 through 5, which were received without objection. On February 1, 2013, I received the transcript of the hearing. On February 9, 2013, Department Counsel provided four exhibits received from Applicant on February 5, 2013. (AE 6 through 9) On February 12, 2013, Department Counsel provided two exhibits received from Applicant on February 11, 2013. (AE 10-11) Department Counsel did not object to my consideration of AE 6 through 11, and I admitted the additional six exhibits into evidence. I closed the record on February 12, 2013.

Findings of Fact²

In his Answer to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.b, 1.c, and 1.f. He denied the other SOR allegations, and provided mitigating information. His admissions are incorporated in the findings of fact.

Applicant is a 62-year-old chief technology adviser for a science and technology division. He graduated from college with a bachelor's degree in 1972, and he later earned a master's degree in computer science and mathematics. He has held a high-level security clearance since 1968 with several government agencies. (Tr. 10-11, 110) There have never been any allegations against Applicant of security violations, or the misplacement of classified documents. (Tr. 111, 138)

Applicant served on active duty in the Air Force from 1972 to December 1980, and then in the Air Force Reserve until June 1994. He had insufficient "good years" of service to qualify for retirement at age 60. (Tr. 157) He married in 1981, and he was divorced in December 2005. His three children were born in 1983, 1985, and 1987. (GE 1)

In August 2000, Applicant received a traumatic brain injury in an accident. He has received medical care for the last 10 years and he currently meets with a licensed clinical social worker and psychotherapist for neuropsychology care once every two weeks. (Tr. 154; GE 2 at 216) Applicant's psychotherapist has treated him for nine years. She described his disability as follows:

[Applicant's] head trauma and resulting disability significantly impacted his executive function. Especially early on—[he] had great difficulty managing his administrative and financial affairs. The disability impact was particularly acute because he has been living alone since his wife

²To protect Applicant's right to privacy, some details have been excluded. Specific information is available in the cited exhibits.

separated from him in 2002, and subsequently divorced him in December 2005. In the early years that I was seeing [him] (2003 - 2007) not only was he unable to obtain and maintain viable employment—he was unable to even make therapy appointments on time. He was often as late as 45 minutes, or he would come on the wrong day. He couldn't make and adhere to a budget or figure out how to pay his bills, he made poor decisions regarding his children, and he was taken advantage of by an unscrupulous lender, and refinanced his home (which he subsequently lost) with a sub-prime mortgage. Perhaps the best illustration of [Applicant's] disability is that when he lost his home he was unable to organize himself sufficiently to sort and pack and had to put all of his possessions in several large storage units, costing him upwards of \$1,200/month. Sadly, he was unable to sell his possessions and give up the storage units³ because he couldn't figure out how to take a picture of the items and list them on Craig's List or Ebay. So he paid for these storage units for years.

[Applicant] knew he needed to file his taxes and consistently asked for help to do so. [A medical treatment facility] wouldn't help him because he wasn't disabled enough. And [his] attempts to get help from the IRS were frustrating and futile. He wasn't allowed to make an appointment, but was required to appear in person, but when he went in person he never got the same IRS support person. Consequently, he had to start over at each visit, and was ultimately never able to complete his taxes. Prior to his accident, [Applicant] was a consultant and owned his own business. The IRS seems to have no accommodations for someone with fairly complicated taxes (i.e., not just a W-2) who has had a brain injury and is no longer capable of filing.

In recent years [Applicant] has made significant progress. He has obtained and maintained employment commensurate with his expertise and experience, he has found an apartment and is living independently and managing his financial and administrative affairs adequately, and he has filed all of his taxes for the past ten years. (GE 2 at 216-217)

Applicant was on disability from about August 2000 to about December 2001. He returned to his job for a few months, and then he was unemployed from about December 2001 to December 2002. He was employed from December 2002 to December 2004. From April 2006 to April 2009, he was employed selling computer products and services, part-time for the first six months, and then full-time for the remainder. (Tr. 143-146; GE 1 at 25-28; GE 2 at 216) Applicant believes his brain injury does not affect his ability to safeguard classified information. (Tr. 176-177)

³Applicant has a large volume of documents stored in 460 boxes in his basement relating to his medical problems and debts. (Tr. 131-132; AE 5)

In his July 2010 SCA, Applicant disclosed that he had financial problems, which included his failure to file tax returns and pay taxes, liens placed against his property, judgments filed against him, debts turned over to collection agencies, wages garnished, over 180 days delinquent on some debts, and currently over 90 days delinquent on some debts.

The subsequent background investigation confirmed the seven SOR allegations, which include six delinquent debts totaling \$565,178 (a judgment for \$11,116; a state tax lien for \$13,850; a federal tax lien for \$365,000; a state tax lien for \$118,000; a medical collection account for \$165; and a state tax debt for \$57,047). The seventh SOR allegation alleges that Applicant did not file state income tax returns for 2002 and 2005 through 2011. The status of the SOR allegations is as follows:

SOR ¶ 1.a (judgment for \$11,116) -- Applicant lacked insurance on his vehicle in January 2004, and during that month he was involved in an accident. The insurance company representing the other party obtained the judgment alleged in SOR ¶ 1.a. Applicant established a payment plan with the creditor and made 17 payments of \$104 from September 1, 2011 to January 2, 2013. The amount currently owed on the debt is \$9,765; however, over half of that amount is interest. The payment plan is in good standing. Applicant intends to pay this judgment. (Tr. 112-115, 141; AE 1; AE 7)

SOR ¶ 1.b (a state tax lien for \$13,850); SOR ¶ 1.d (a state tax lien for \$118,000); and SOR ¶ 1.f (a state tax debt for \$57,047) are all unresolved.

The state initially garnished Applicant's pay; however, the garnishment was removed due to his lack of income. (Tr. 142, 160-163) The state filed tax liens on April 1, 2010, for \$118,837, and on May 5, 2011, for \$13,850. (GE 4, 5, 8) Citing an August 24, 2012 letter from the state tax authority, Applicant contended that the \$118,000 tax lien was the same as the state tax debt for \$57,047. (GE 2) However, the state tax authority's August 2012 letter did not specify the tax year which generated the debt or whether it was a consolidation of his state tax debts. (Tr. 159-160, 168-169; GE 2 at 218) Applicant's evidence failed to establish his contentions.

The \$118,000 tax lien, downloaded from Lexis, does not include a case number. (GE 8) Applicant said the \$13,850 debt was reduced, and the state released the two tax liens. (Tr. 115-116, 141, 165-167) He received a bill the day before his hearing from the state indicating he had a state tax bill for \$66,000; however, he was unsure whether that was his entire, consolidated state tax bill or was for a particular year. (Tr. 170-171) On February 4, 2013, Applicant contacted the state tax authority and was advised that his 2006 and 2009 state tax returns were still missing. (AE 8)

SOR ¶ 1.c (a federal tax lien for \$365,000) is unresolved. Applicant admitted that he had a federal tax lien, but not a levy filed against him. He said, the majority of the tax lien is for one tax year. He has filed all of his federal tax returns. (Tr. 120-121) On August 27, 2012, the Internal Revenue Service (IRS) wrote Applicant and indicated he had a deficiency of \$335,255 for tax year 2007, which included \$83,793 in penalties.

(Tr. 173-174; AE 3) Form 4549, generated by the IRS, indicates real estate sales of \$1,000,000⁴ and \$16,935 in discharged indebtedness as part of his income. It notes his tax return was filed on April 15, 2008. (AE 3)

On January 8, 2013, Applicant wrote the IRS that the majority of income for 2007 resulted from the foreclosure of his homestead following his traumatic brain injury and defective subprime loan. He asked the IRS for a meeting to address settlement. (AE 4)⁵ He went to the IRS office and asked for help; however, the IRS would not help him. (Tr. 125) On February 6, 2013, the Applicant was informed that the Office of Taxpayer Advocate (OTA) had taken control of his case and any IRS collection action was suspended during OTA's assessment of his case. (AE 9)

SOR ¶ 1.e (a medical collection account for \$165) is paid. Applicant had difficulty discovering the creditor information. Applicant paid the debt on January 24, 2013, and a January 24, 2013 letter from the creditor indicates the balance is zero. (Tr. 140-141, 174; AE 6)

SOR ¶ 1.g alleges that Applicant did not file state income tax returns for 2002 and 2005 through 2011 – this allegation is resolved for Applicant. From 1985 to 2000, Applicant timely filed his tax returns. (Tr. 98) Applicant's accountant, E, was aware that Applicant suffered a brain injury in 2000, which affected his mental processing and memory; however, Applicant continued to be gainfully employed. (Tr. 96) After his injury, Applicant needed reminders from E about meeting requirements. (Tr. 97) Applicant said he signed the 2002 state tax return in E's office and expected that it would be mailed to the state tax authority. (Tr. 89, 117)

In 2010, the Office of Personnel Management (OPM) advised the Department of Defense that no state tax return was filed in 2002, 2005, and 2006, and the 2003 and 2004 state tax returns were not filed until 2009. (Tr. 89-92) E had retained a copy of the 2002 state tax return, and he provided it to Applicant. (Tr. 89) On January 22, 2013, Applicant called the state tax authority, and was advised that the state tax authority did not show tax returns filed for 2006 and 2009; however, his 2007 and 2008 state tax

⁴Applicant's spouse's ownership interest in their residence was ended with a quit claim deed. (GE 1 at 20) Applicant refinanced the residence to pay debts. (GE 1 at 20) Applicant did not provide further details about the expenditure of the borrowed funds, the foreclosure process, and the resolution of his mortgage debt.

⁵The Mortgage Forgiveness Debt Relief Act of 2007 was enacted on December 20, 2007 (see IRS News Release IR-2008-17). Generally, the Act allows exclusion of income realized as a result of modification of the terms of the mortgage, or foreclosure on one's principal residence beginning with calendar year 2007. The most common situations when cancellation of debt income is not taxable that may involve Applicant include: (1) qualified principal residence indebtedness, which applies to most homeowners when the mortgage exceeds the sale price of their home; or (2) if Applicant was insolvent when the debt was cancelled, some or all of the cancelled debt may not be taxable. Insolvency is defined as total debts being more than the fair market value of his total assets. Information about applying to the IRS for mortgage forgiveness under the act is available at <http://www.irs.gov/Individuals/The-Mortgage-Forgiveness-Debt-Relief-Act-and-Debt-Cancellation>.

returns were being in-processed. (Tr. 172; AE 2) Applicant advised the state that he would re-mail the 2006 and 2009 state tax returns the next day. (AE 2) On February 7, 2013, the state tax authority confirmed to Applicant that his 2006 and 2009 state tax returns were received, and it would be about six weeks before the state tax authority could assess whether and the amount of any taxes that might be owed. (AE 2, 8)

Applicant's 2004 adjusted gross income (AGI) on his Form 1040 is \$151,796. On line 15a of his 2004 Form 1040, he showed an \$80,000 IRA distribution, with zero taxable amount on line 15b, presumably because it was a rollover. (GE 2 at 241) Applicant paid his accountant \$14,000 to file his 2004 tax return. (Tr. 137) He could not afford to use an accountant after that to complete his tax returns.

Applicant's 2005 AGI on his Form 1040 is \$108,710. (GE 2 at 240) Applicant's 2006 Form 1040 shows: income on line 7 of \$1,657; business loss on line 12 of \$5,144; capital loss on line 14 of \$129,084; IRA distribution on line 15a of \$22,906; pensions and annuities on line 16a of \$265,578;⁶ no taxable amount on lines 15b and 16b; and adjusted gross income of negative \$132,470. (GE 2 at 239) On February 11, 2013, the IRS notified Applicant that his 2006 account had been evaluated. The IRS determined that his account balance was decreased from \$181,677 to zero. (AE 11) The SOR did not allege a delinquent tax account for 2006. Applicant argued that his state taxes for 2006 would be reduced by \$20,000 or more; however, he did not provide a year-by-year list of state taxes owed. (AE 10)

Applicant's 2007 Form 1040 shows: wages on line 7 of \$7,378; capital gain on line 13 of \$312,563; and AGI on line 37 of \$319,941. Applicant's AGI on line 37 of his 2008 Form 1040 of \$7,874. (GE 2 at 237-238)

Applicant's 2009 Form 1040 shows: wages on line 7 of \$4,800; rental real estate, royalties, partnerships, S corporations, trusts, etc. on line 17 of \$43,006; and AGI on line 37 of \$46,944. Applicant's 2010 Form 1040 shows: wages on line 7 of \$4,800; rental real estate, royalties, partnerships, S corporations, trusts, etc. on line 17 of \$40,636; and AGI on line 37 of \$43,762. (GE 2 at 235-236)

Applicant's gross income in 2011 was \$84,000, and it was about \$7,000 a month for the first eight months of 2012. His personal financial statement showed a net remainder of \$70 on a monthly gross income of \$7,000. For the last three months of 2012, he earned about \$12,000 from a part-time teaching job, and his monthly net remainder was negative. (Tr. 150-153; GE 2 at 215) Applicant has not had financial counseling. (Tr. 174-175)

Applicant presented the testimony of three witnesses. E is a certified public accountant, and Army veteran, who was awarded a Silver Star and two Bronze Star

⁶At his hearing, Applicant explained why he believed the IRS had incorrectly determined his taxes. Applicant said he took some money out of his IRA account, and then he was defrauded. (Tr. 138-139) The IRS charged Applicant twice for the withdrawal from his account. (Tr. 139) He believed the IRS indicated he made \$280,000 in one year, instead of his actual income of \$10,000. (Tr. 139)

medals for service during the Vietnam War. E assisted Applicant with his finances for 20 or 25 years. Applicant never asked E to do anything inappropriate in preparing tax returns. Applicant was always honest about his financial transactions. Applicant had a moderate, financially conservative, middle class lifestyle for many years. E assisted Applicant with the completion of his tax returns for 2000 through 2004 tax years. E was unsure about whether he worked with Applicant after 2008 or 2009. E and Applicant received assistance assembling records from Applicant's family and volunteers. Applicant faced the necessity of collecting and analyzing his records to file his tax returns. In E's opinion, Applicant is an honest, responsible person and could be entrusted with classified information. (Tr. 67-91)

A is a retired major general. He has been a commander six times from squadron level to centers at the two-star level. He has substantial experience assessing character and integrity. He met Applicant in October 2010 and became his supervisor in November 2010. A has been Applicant's supervisor on a full-time or part-time basis for two years. Applicant told A about his injury, family, religion, and financial problems in November 2010. A observes Applicant on a daily to weekly basis. Applicant is an invaluable asset to the company, as he is a classic scientist who provides very beneficial and even brilliant insights. He is the perfect person to review proposals as he looks at things from a different perspective. Applicant is a guileless, forthright person with a positive personality. He can handle complex thoughts and analysis. He is completely confident with trusting Applicant with the nation's secrets. (Tr. 23-35)

V has a Ph.D. in applied mathematics and served for three years on active duty in the Army in the 1970s. V has held high-level security clearances and worked for defense contractors for many years. He has known Applicant socially since about 2006, as part of a men's religious group, meeting twice a week for about four hours. V described Applicant as a guileless, somewhat absent-minded software expert. Applicant is humble, reliable, and trustworthy, and he retains that positive reputation with their colleagues. He is the kind of person who might walk outside on a cold day wearing only one glove, and only when he began to feel the cold on the hand without a glove would he realize his oversight. Nevertheless, Applicant has the ability to control material and ensure it is properly protected from loss or compromise. Applicant is able to compartmentalize things that are important and complete essential tasks. Applicant would report any attempt to obtain classified information to his security officer. (Tr. 37-59)

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Financial Considerations (Guideline F)

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" "(c) a history of not meeting financial obligations;" and "(g) failure to file annual Federal, state, or local income tax returns as required" In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, his SCA, his SOR response, and his statement at his hearing. The evidence established Applicant's six delinquent debts, totaling \$565,178. It also established that Applicant did not file state income tax returns for 2002 and 2005 through 2011, as required by law. The Government established the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

None of the mitigating conditions fully apply. Applicant paid the medical debt for \$165 (SOR ¶ 1.e), and has an established payment plan for the debt alleged in SOR ¶ 1.a. He filed his state tax returns, with the last two being filed in February 2013. SOR ¶¶ 1.a, 1.e, and 1.g are mitigated.

Applicant has an unresolved IRS SOR debt of \$365,000, and three unresolved state tax SOR debts of \$13,850; \$118,000; and \$57,047. He mentioned a new \$66,000 state tax bill, and he did not explain whether it duplicated any of the three previous bills,

or was a consolidation of the three previous state tax bills. Major General (Ret.) A advises that Applicant has had the mental and executive abilities to safeguard classified information for the last two years they have worked together. Applicant should have made greater progress getting his state tax returns filed sooner and resolving these four substantial tax debts. He should have gone through his boxes of materials, collected and organized his documentation, and filed his taxes.

Applicant is not given full credit for the financial counseling he received because his progress has been limited, and he did not provide a credible budget showing how he will pay his SOR and tax debts. Applicant is unsure about the extent of his federal and state income tax liability, and he was not able to explain when his tax problems will be resolved.

Applicant attributes his financial problems to his August 2000 brain injury, divorce, IRS errors, and his exploitation by an unscrupulous financial advisor. These were circumstances largely beyond Applicant's control; however, he did not establish that he acted responsibly under the circumstances. He did not provide enough details to establish the link between the unanticipated circumstances and his inability to make greater progress paying or resolving his SOR debts over the last two years.

Applicant did not establish that he acted in good faith to resolve his delinquent SOR debts.⁷ He had the means to make more progress resolving his delinquent SOR debts and tax problems. He did not prove that he maintained contact with the IRS and state tax authority,⁸ and he did not prove that he made sufficient attempts to timely establish payment plans. He did not establish that "there are clear indications that the problem is being resolved or is under control."

⁷The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

⁸"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

AG ¶ 20(e) is not applicable. Applicant did not provide documented proof to substantiate a reasonable basis to dispute his debts followed by appropriate actions to resolve his delinquent, unresolved debts.

In sum, Applicant failed to establish a track record of financial responsibility, that he is in control of his financial situation, and that additional delinquent debt is unlikely to recur. I have credited Applicant with mitigating SOR ¶¶ 1.a, 1.e, and 1.g. However, a \$365,000 federal tax debt, and at least three substantial state tax debts remain unresolved. Applicant was unable to document the scope of his state tax debt, and he did not indicate whether the two state tax returns for 2006 and 2009 filed in February 2013, resulted in additional state tax debts. His track record of financial responsibility shows insufficient effort, good judgment, trustworthiness, and reliability to warrant mitigation of financial considerations concerns. Considering the evidence as a whole, I find that it is likely that his financial problems will continue.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶ 2(c))

Although the rationale for reinstating Applicant's clearance is insufficient at this time, there are several factors tending to support reinstatement of his access to classified information. Applicant is a 62-year-old chief technology advisor for a science and technology division. He graduated from college with a bachelor's degree and later earned a master's degree in computer science and mathematics. He has held a high-level security clearance since 1968, and there have never been any allegations against Applicant of security violations or misplacement of classified documents. Applicant served on active duty in the Air Force from 1972 to 1980, and in the Air Force Reserve from 1981 to 1994.

In August 2000, Applicant received a traumatic brain injury in an accident. He has received medical care for the last 10 years, and he currently meets with a licensed clinical social worker and psychotherapist for neuropsychology care once every two weeks. He is capable of understanding and complying with his security responsibilities.

Applicant attributes his financial problems to four circumstances largely beyond his control: (1) his 2000 brain injury; (2) his divorce; (3) IRS errors; and (4) an unscrupulous lender and financial advisor. He deserves credit for volunteering to support the U.S. Government as an employee of the Air Force and a defense contractor. There is every indication that he is loyal to the United States and his employer. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial. Applicant is an intelligent person and he recovered sufficiently from his brain injury to hold demanding employment. Several credible witnesses indicated he

was capable of conscientiously safeguarding classified information. Nevertheless, he failed to ensure his federal and state tax returns were filed in a timely manner.

Applicant has a presumptively valid federal income tax debt of \$365,000, and three presumptively valid state tax debts of \$13,850; \$118,000; and \$57,047. In January 2013, he received a letter from the state seeking payment of \$66,000. This may be a new state tax debt, a duplication of one of the previous state tax debts, or a consolidation of the three previous state tax debts. He did not provide a copy of the letter from the state, which sought \$66,000.

In February 2013, the IRS advised Applicant that his tax debt for 2007 was resolved; however, this debt was not listed on the SOR. Even now, the scope of his tax liability is unknown. Considering Applicant's and his witnesses' testimony, he failed to provide a detailed explanation of how circumstances beyond his control caused him not to make greater progress paying or resolving more of his SOR debts. He had the ability and resources to make greater progress resolving his debts. On balance, there are not "clear indications that the problem is being resolved or is under control." He did not prove that he had a sufficient track record of debt payment, or that he acted responsibly with respect to his debts under all of the circumstances. Financial considerations security concerns are not fully mitigated at this time, and eligibility for access to classified information is denied.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

Juan J. Rivera
Administrative Judge